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Of Attorneys for Debtor-in-Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re) Case No. 14-30772-tmb11
)
Invest n Retire, LLC,) AMENDED MOTION FOR AUTHORITY TO PAY
) PREPETITION PAYROLL, PAYROLL TAXES,
) AND WORKERS' COMPENSATION
) INSURANCE PREMIUMS
Debtor-in-Possession.)

The Debtor-in-Possession, Invest n Retire, LLC ("InR" or "Debtor"), requests entry of an order authorizing the Debtor to pay prepetition payroll, payroll taxes, and workers' compensation insurance premiums associated with its current payroll (for the period February 1, 2014 through February 15, 2014), and in support, represents and states:

1. On February 18, 2014, the Debtor commenced a reorganization case by the filing of a voluntary petition under Chapter 11 of the United States Bankruptcy Code (the "Code").

2. Pursuant to Sections 1107 and 1108 of the Code, the Debtor is continuing in possession of its property and is operating and managing its business as a Debtor-in-possession.

3. Debtor seeks authority to pay any prepetition wages and associated taxes.

Page 1 of 5 - AMENDED MOTION FOR AUTHORITY TO PAY PREPETITION PAYROLL , PAYROLL TAXES,
EMPLOYEE HEALTH INSURANCE PREMIUMS AND WORKERS' COMPENSATION INSURANCE
PREMIUMS

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Debtor does not provide any employee benefits and therefore does not seek authority to pay such benefits. Debtor also seeks authority to honor prepetition checks for payroll taxes, and workers' compensation insurance premiums which may not have cleared the bank by the Petition date. Debtor's first post-petition pay day is February 20, 2014, and includes 12 days of earned but unpaid wages prior to the Petition Date during the current pay period (payroll is paid twice monthly on the 5th and 20th of each month). Debtor will have only two employees on the payroll post-petition. Debtor's Manager, Darwin K. Abrahamson, will serve without pay.

4. Debtor requests authority to pay these amounts on the next regularly scheduled payroll, which is February 20, 2014. The amount of wages per employee which Debtor seeks authority to pay is shown on **Exhibit A** attached hereto and is limited to the priority amount of 11 USC § 507(a), and is limited to the current pay period from February 1, 2014 through February 15, 2014.

5. Pursuant to Code Sections 507(a)(4), 507(a)(5), and 105, and the judicially recognized "necessity of payment doctrine," Debtor requests authority to pay prepetition wages and payroll taxes.

6. The gross amount due for the pay day of February 20, 2015 for payroll and all associated payroll taxes is \$12,192.00. This amount includes management payroll earned during the pay period due to Carolyn Abrahamson (the spouse of Debtor's manager) of \$5,625.00.

7. The source of funds to pay the payroll and associated taxes and medical insurance will be from a post-petition capital contribution of \$100,000 being made by PENSCO Trust Co Custodian FBO Boyd K. Fish. No cash collateral will be expended in

connection with meeting this payroll. A cash collateral motion is not expected to be filed until Debtor seeks to use payments which will become owed and paid to the Debtor on service contracts for the first quarter of 2014, receipt of which payments is not expected until April 1 - 15, 2014.

ARGUMENT

As the Court stated in In re Ionosphere Clubs, Inc., 98 B.R. 174 (Bankr. S.D.N.Y. 1989), "the paramount policy and goal of Chapter 11, to which all other bankruptcy policies are subordinated, is the rehabilitation of the Debtor. This policy was clearly articulated by the United States Supreme Court in NLRB v. Bildisco and Bildisco, 465 U.S. 513, 104 S.Ct. 1188, 79 L.Ed. 2d 482 (1984) when the Court stated, " 'the fundamental purpose of reorganization is to prevent the debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources.'" In re Ionosphere at 176-177 (citations omitted). The Ionosphere Court went on to note that "Section 105 may indeed empower the Bankruptcy Courts to authorize the immediate payment of prepetition claims when essential to the survival of a debtor." Id. at 177; see also In re Baldwin United Corp., 765 F.2d 343, 348 (2d Cir. 1985).

Like the Court in Ionosphere, the Bankruptcy Court in In re Chateaugay Corp., 80 B.R. 279 (S.D.N.Y. 1987), authorized the Debtor to pay certain prepetition wages, salaries, reimbursement expenses and employment benefits, as well as certain workers compensation obligations, which claims totaled in excess of \$250 million. A group of similarly situated creditors (who the debtor did not seek authorization to pay) attacked the Court's order on grounds that such selective payments violated Section 107 of the Code. On appeal, the District Court rejected this argument and explained:

"A rigid application of the priorities of §507 would be inconsistent with the fundamental purpose of reorganization and of the Act's grant of equity powers to bankruptcy courts, which is to create a flexible mechanism that will permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately."

The District Court thus upheld the Bankruptcy Court's order, which had concluded that if sound business judgment exists to pay certain prepetition claims, and the payments serve to preserve and maximize the value of the debtor's estate, the Court should authorize the payments. Id. at 282.

In In re Gulf Air, Inc., 112 B.R. 152 (Bankr. W.D. La. 1989), the Court applied the "necessity of payment" doctrine and authorized the debtor to pay certain prepetition employee claims. In Gulf Air, the debtor (a charter air carrier) sought authority to pay all prepetition amounts owed to salaried and hourly employees, and flight crew members, including their prepetition expenses. Furthermore, the debtor sought authority to pay prepetition health and life insurance premiums for employees and their dependents, in addition to workers' compensation.

The debtor in that case asserted that the success of the reorganization was dependent upon continued employment of its skilled employees. Without immediate payment to the employees, the employees would cease working, thereby leaving the debtor incapable of operating. The Court determined that the immediate payment of the employee claims was in the best interest of the debtor and its estate, and authorized the debtor to pay the prepetition employee claims.

Debtor represents a similar scenario. Without the continued loyalty of Debtor's employees, Debtor will lose its goodwill in the marketplace and will not be able to successfully reorganize.

WHEREFORE, Debtor respectfully requests that this Court enter an order allowing it to pay the payroll and other payroll related items referred to herein.

DATED: 02/19/14

Respectfully submitted;

VANDEN BOS & CHAPMAN, LLP

By: /s/Robert J Vanden Bos
Robert J Vanden Bos, OSB #78100
Of Attorneys for Debtor-in-Possession

Invest n Retire, LLC
Payroll Information - Exhibit A

Pay Period from: Feb 1 to Feb 15

Paydate Feb 20 2014	Total	Gross	Employer Taxes OR OR					Gross	Employee Tax Withholding						Net
Employee	Hours	Salary	SS	Medicare	TriMet	WC	Total	Payroll	FITW	Med	SITW	WC	SS	Total	Payroll
Kalyan Ganesan	86.67	\$5,625.00	348.75	81.56	39.48	1.21	471.00	6,096.00	629.58	\$81.56	\$365.92	\$1.21	\$236.25	\$1,314.52	\$4,310.48
Carolyn Abrahamson	86.67	\$5,625.00	348.75	81.56	39.48	1.21	471.00	6,096.00	629.58	\$81.56	\$365.92	\$1.21	\$236.25	\$1,314.52	\$4,310.48
Totals	86.67	\$11,250.00	\$697.50	\$163.12	\$78.96	\$2.42	\$942.00	\$12,192.00	\$1,259.16	\$163.12	\$731.84	\$2.42	\$472.50	\$2,629.04	\$8,620.96

Gross = total for two week pay period with
payroll paid bi-Monthly

CERTIFICATE - TRUE COPY

DATE: February 19, 2014

DOCUMENT: AMENDED MOTION FOR AUTHORITY TO PAY PREPETITION
PAYROLL, PAYROLL TAXES, AND WORKERS'
COMPENSATION INSURANCE PREMIUMS

I hereby certify that I prepared the foregoing copy of the foregoing named document and have carefully compared the same with the original thereof and it is a correct copy therefrom and of the whole thereof.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing on:

See Attached List

by mailing a copy of the above-named document to each of them in a sealed envelope, addressed to each of them at his or her last known address. Said envelopes were deposited in the Post Office at Portland, Oregon, on the below date, postage prepaid.

I hereby certify that the foregoing was served on all CM/ECF participants through the Court's Case Management/Electronic Case File system.

Dated: February 19, 2014

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Label Matrix for local noticing
0979-3
Case 14-30772-tmb11
District of Oregon
Portland
Wed Feb 19 08:31:39 PST 2014

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by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

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